

**Internal Revenue Service**  
Appeals Office  
P.O. Box 24018  
Fresno, CA 93779-4018

**Department of the Treasury**

**Person to Contact:**

Melanie R Wagster

Employee ID Number: 1000162387

Tel: (559) 454-6359

Fax: (855) 223-7118

Contact Hours: 8:00 AM-2:30 PM PST

**Refer Reply to:**

AP:EX:FRC:MRW

**In Re:**

Freedom of Information Act

**FOIA Case Number(s):**

F19176-0082

Date: OCT 25 2019

NICHOLAS XANTHOPOULOS  
1726 GRAND AVE, APT 3  
SAINT PAUL MN 55105

Dear Mr. Nicholas Xanthopoulos:

This letter is in response to your appeals request dated October 1, 2019 for Freedom of Information Act (FOIA) information. According to your letter you are appealing the response of August 29, 2019 from the Disclosure Specialist of your request for information dated June 19, 2019.

You asked for following items:

1. An unredacted version of current IRM 21.1.3.3
2. All final, written or recorded materials provided to IRS employees to ensure they do not request a third-party caller return information while the taxpayer is listening
3. All final, written or recorded materials provided to IRS employees to ensure they do not add any notes about a third-party caller's return information to a taxpayer's file;
4. All final, written or recorded materials provided to IRS employees to ensure that, in responding to a taxpayer's disclosure request, they:
  - a. Listen to all responsive audio recordings in their entirety and redact every portion that includes the third-party caller's return information; and
  - b. Redact from all responsive documents all references to the Third-party caller's return information.
5. All other final, written or recorded materials provided to IRS employees to ensure that a third-party caller's return information remains separate from the file of the taxpayer they are calling about.
6. All final, written or recorded materials provided to IRS employees to ensure they use only a third-party caller's return information to make centralized authorization file ("CAR") inquiries through Integrated dated retrieval System command codes CFINK, RPINK, KAFFQU and KAFTQ

Disclosure Specialist stated that their response constitutes a partial denial of your request. The Disclosure Specialist response to item one of your FOIA request, the IRM 21.1.3.3 is available to the public at irs.gov. Any text marked with "==" which is Official Use Only which indicates information has been deleted and is withheld under FOIA exemption (b)(7)(E).

Disclosure Specialist response referred you to item one above regarding your request in items two, three, five and six.

Disclosure Specialist stated that in response to item four, the IRM 11.3.13 is available to the public at [irs.gov](https://www.irs.gov).

Your appeal states that Disclosure Specialist improperly withheld agency records under Exemption (b)(7)(E), Section (b)(7)(E). These exemptions are inapplicable to the redacted portions of IRM§21.1.3.3 for two reasons:

1. There is good reason to believe that it does not contain information compiled in the course of a specific instigation. Rather it would seem to contain information that is general guidance for IRS customer service personnel to follow, which takes it out of the scope of Exemption 7(E).
2. Assuming the IRM constituted Exemption 7 material compiled for law enforcement purposes, IRS must establish that releasing the manual could reasonably be expected to risk circumvention of the law by disclosing guidelines for law enforcement investigations or prosecutions or would disclose techniques and procedures for law enforcement investigations or prosecutions.

You requested that IRS FOIA Appeals reverse the withholding decision and order the immediate release of those records sought in your June 19, 2019 FOIA request

We have reviewed the response of the Disclosure Specialist on August 29, 2019, the Disclosure database and have determined that the response was appropriate. Disclosure properly directed you to review the Internal Revenue Service Internal Revenue Manual (IRM) that are made public at [irs.gov](https://www.irs.gov). Then they directed you that any of the text in IRM 21.1.3.3 that is marked with "==" is official use only which indicates information has been deleted and properly referenced the applicable FOIA exemption (b)(7)(E).

Exemption 7 allows for the withholding of "information compiled for law enforcement purposes." 5 U.S.C. Section 552(b)(7). The law to be enforced within the meaning of "law enforcement purposes" includes both civil and criminal statutes as well as statutes authorizing administrative proceedings. See e.g., *Ortiz v. HHS*, 70 F.3d 729, 732 (2d Cir. 1995) (record at issue which launched criminal investigation of plaintiff, properly withheld even though no charges were brought); *Kay v. FCC*, 867 F. Supp. 11 (D.D.C. 1994) (FCC regulations implementing the Communications Act).

There is little doubt that the Service is tasked with the responsibility of enforcing the internal revenue laws. See generally I.R.C. Section 7801 (administration of this title performed by or under direction of Secretary of Treasury), I.R.C. Section 7802 (creating position of Commissioner of Internal Revenue). The enforcement of the internal revenue laws through the collection of taxes involves a law enforcement proceeding.



See e.g. *Becker v. IRS*, 34 F.3d 398, 407 (7th Cir. 1994) (IRS has law enforcement purpose in investigating potential illegal tax protestor activity); *Church of Scientology Intern. v. IRS*, 995 F.2d 916, 919 (9th Cir. 1993) ("EO [Exempt Organization Division of the IRS] performs a law enforcement function by enforcing the provisions of the federal tax code that relate to qualification for exempt status"), *Lewis v. IRS*, 823 F.2d 375, 379 (9th Cir. 1987) (documents generated during ongoing criminal tax investigation meet law enforcement threshold); *Holbrook v. IRS*, 914 F. Supp. 314 (S.D. Iowa 1996) (documents gathered during IRS criminal investigation compiled for law enforcement purposes). But see, *Author Services v. IRS*, 1992 U.S. Dist. Lexis 11907 (C.D. Cal. July 30, 1992) (records compiled after investigation completed not for law enforcement purposes).

Exemption (b)(7)(E) affords protection to all law enforcement information which "would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." 5 U.S.C. 552(b)(7)(E). See also *Becker v. IRS*, 34 F.3d at 405; *PHE, Inc. v. Dept. of Justice*, 983 F.2d 248, 251 (D.C. Cir. 1993) ("Release of FBI guidelines as to what sources of information are available to its agents might encourage violators to tamper with those sources of information and thus inhibit investigative efforts."). The redacted data would disclose a law enforcement technique utilized by the Service.

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and the Office of Disclosure as a non-exclusive alternative to litigation. The Office of Appeals is not a part of this mediation process. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you disagree with the Appeals determination and wish to pursue mediation, you may contact OGIS in any of the following ways:

Office of Government Information Services  
National Archives and Records Administration  
Room 2510  
8601 Adelphi Road  
College Park, MD 20740-6001  
Email: [ogis@nara.gov](mailto:ogis@nara.gov)  
Telephone: 301-837-1996  
Facsimile: 301-837-0348  
Toll-free: 1-877-684-6448

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The FOIA requires us to advise you of the judicial remedies granted in the Act. You may file a complaint in the United States District Court for the District in which you reside, or have your principal place of business, or in which the agency records are located, or in the District of Columbia.

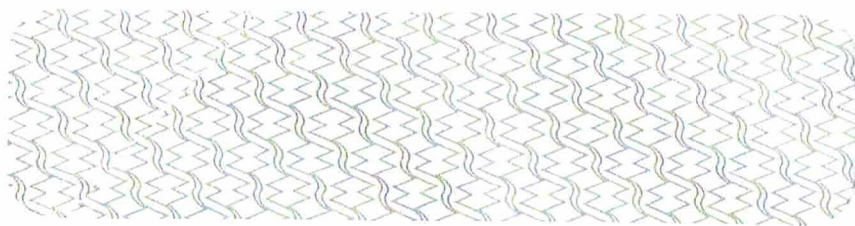
Sincerely,

A handwritten signature in blue ink, appearing to be 'P. Perez', with a stylized, cursive script.

P. Perez  
Appeals Team Manager

Internal Revenue Service  
Appeals, Fresno Campus  
P.O. Box 24018  
Fresno, CA 93779-4018

Official Business  
Penalty for Private Use, \$300



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Exhibit E  
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